

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

CRL.A.No. 2135 of 2006()

AGAINST THE ORDER IN CRL.LP.561/2006 Dated 31/10/2006
ST.146/2005 of JUDL. MAGISTRATE OF FIRST CLASS-III, KOCHI
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APPELLANT:

M/S. BHAVANA CINEMA,
HOUSE NO.C 15/686, PADAMUGAL, KAKKANAD,
PIN-682 030, REP. BY MANAGING PARTNER
K.M.SIDDIQUE, S/O. MAMADU, PETALS,
HOUSE NO.C 15/686, PADAMUGAL, KAKKANAD.

BY ADV. SRI.K.I.ABDUL RASHEED

RESPONDENTS:

1. MR. SIYAD KOKER,
PROPRIETOR, M/S. KOKERS RELEASE,
BAVA'S COLONY, PULLEPADY, KOCHI-682 035.

2. STATE OF KERALA, REP. BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI.AKBAR K.A. FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
08/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.M.JAMES, J.

Crl. Appeal No. 2135 of 2006 (A)

Dated this the 8th day of February, 2007

J U D G M E N T

The appellant was before the court below, the Judicial Magistrate of the First Class-III, Kochi, in S.T.No.146/2005, under Section 138 of the Negotiable Instruments Act, against the first respondent, the accused.

2. The matter stood posted on different dates. The learned Magistrate found the appellant was absent when the case was taken up. Therefore, it was dismissed. Hence, the appellant is before this Court, with this appeal, after obtaining leave.

3. The counsel appearing for the appellant has stated the dates of posting. It show that on initiating steps under Section 82 and 83 Code of Criminal Procedure, the accused appeared before the court below. He was enlarged on bail. The case was posted for recording the plea of the accused on 16/01/2006. But he was absent. Therefore, the case was adjourned to 20/04/2006. He was absent on that day too. The

next adjournment dated was 28/04/2006. The counsel submits that the accused was absent on that day and therefore, the case was adjourned to 05/05/2006.

4. The clerk of the advocate of the appellant before the court below, noted the date of posting as 05/08/2006 instead of 05/05/2006. Therefore, there was no appearance of the appellant on 05/05/2006, as well as, on 15/06/2006, the next posting date. The subsequent posting was on 03/08/2006. On realising the mistake, a representation was made by the counsel on 03/08/2006. Accordingly, the case was adjourned to 01/09/2006.

5. It is submitted by the counsel for the appellant that on the posting date, because of the traffic block, the counsel could not appear in time, although the appellant was ready to adduce evidence and file the proof affidavit, as required by the law.

6. The certified copy of the proceedings of the court below is not produced before this Court. The affidavit of the advocate who appeared for the appellant, before the court below, as well as the clerk of the advocate, is also not produced.

7. Service was complete in respect of the accused, the first respondent. But there is no representation. Therefore, I heard the counsel for the appellant.

8. On going through the facts of this case, I am of the opinion that an opportunity be given to the parties, to appear before the court below and adduce evidence. Therefore, I set aside the impugned order, dated 01/09/2006, and restore S.T.No.146/2005 to the file of the Judicial Magistrate of the First Class-III, Kochi.

9. The parties shall appear before the court below on 12/03/2007. The learned Magistrate, after appearance of the parties, shall dispose of S.T.No.146/2005, within two months thereon.

The appeal is allowed as above.

(J.M.JAMES)
Judge

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